

★ JUN 15 2012 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KEVIN HENRY and ROSEMARIE HENRY,

Appellants, :

-against- :

MARC A. PERGAMENT,

Appellee. :

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ORDER  
11 CV 4481(SJF)

FEUERSTEIN, J.

On August 10, 2011, *pro se* appellants Kevin Henry and Rosemarie Henry ("appellants") filed in the United States Bankruptcy Court for the Eastern District of New York ("the bankruptcy court") a notice of appeal to this Court without, *inter alia*: (1) identifying or submitting the order or judgment of the bankruptcy court from which they sought to appeal; or (2) paying the filing fee or seeking waiver of the filing fee from this Court.<sup>1</sup> On October 25, 2011, the appellee, Marc A. Pergament ("the Trustee"), filed a motion to dismiss the appeal based upon appellants' failure to comply with Rules 8002 and 8006 of the Bankruptcy Rules. In an undated letter, filed on October 31, 2011, appellants indicated, *inter alia*, that they "do not currently have any open issues with the court" and referred to the appeal as "non existent." However, since the parties never filed an agreement to voluntarily dismiss the appeal in accordance with Rule 8001(c)(2) of the Bankruptcy Rules, by order entered April 12, 2012, the Trustee's motion to dismiss was granted and appellants' appeal to this Court was dismissed for lack of jurisdiction. Judgment was entered dismissing the appeal on April 13, 2012.

On May 11, 2012, appellants filed a notice of appeal of the judgment to the United States

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<sup>1</sup> The bankruptcy court's docket reflects that appellants paid the filing fee upon the commencement of their proceeding in that court.

Court of Appeals for the Second Circuit. On May 30, 2012, appellants filed separate motions in this Court seeking leave to appeal to the Second Circuit *in forma pauperis* pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure. For the reasons set forth herein, the motions are denied.

Rule 24(a)(1) of the Federal Rules of Appellate Procedure provides that, with exceptions not relevant here, a party who desires to appeal *in forma pauperis* must file a motion in the district court and an accompanying affidavit (1) showing the party's inability to pay or to give security for fees and costs; (2) claiming an entitlement to redress; and (3) stating the issues that the party intends to present on appeal. In support of their motions to proceed *in forma pauperis*, appellants have submitted affidavits attesting to their purported inability to pay the fees and costs associated with the appeal, but nothing more. Specifically, appellants fail to claim an entitlement to redress or to set forth any of the issues that they intend to present on the appeal. Accordingly, appellants' motions are denied for failure to comply with Rule 24(a)(1) of the Federal Rules of Appellate Procedure.

Pursuant to Rule 24(a)(4)(A) of the Federal Rules of Appellate Procedure, the Clerk of the Court is directed to immediately notify the parties and the United States Court of Appeals for the Second Circuit of the denial of appellants' motions. Pursuant to Rule 24(a)(5) of the Federal Rules of Appellate Procedure, appellants may file a motion to proceed on their appeal *in forma pauperis* in the United States Court of Appeals for the Second Circuit **within thirty (30) days after service of notice of entry of this order upon them.**

SO ORDERED.

s/ Sandra J. Feuerstein

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SANDRA J. FEUERSTEIN  
United States District Judge

Dated: June 15, 2012  
Central Islip, New York